

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Structure and Practices of the Video Relay Service Program)	CG Docket No. 10-51
)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities)	CG Docket No. 03-123
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To: The Commission

COMMENTS OF HAMILTON RELAY, INC.

Hamilton Relay, Inc. (“Hamilton”), by its counsel, hereby submits these comments in response to the Further Notice of Proposed Rulemaking (“*VRS Further Notice*”) in the above-captioned proceeding.¹ The *VRS Further Notice*, and the Report and Order accompanying the *VRS Further Notice* (“*VRS Order*”), largely focus on the Commission’s continuing effort to reform the Video Relay Service (“VRS”) program.² Hamilton does not seek to comment on VRS-specific or IP Relay-specific aspects of the *VRS Further Notice* because Hamilton does not provide either of those services. However, the *VRS Further Notice* also seeks comment on extending certain reforms to other forms of telecommunications relay services (“TRS”), including Internet Protocol (“IP”) captioned telephone service (“IP CTS”) which Hamilton does offer. As discussed herein, the history, challenges, and functional requirements of the various forms of TRS are fundamentally different and should be treated separately. The Commission

¹ *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 10-51, CG Docket No. 03-123, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-82 (rel. June 10 2013) (“*VRS Further Notice*”).

² See, e.g., *id.* ¶ 1 (In the *VRS Further Notice*, “we solicit further comment on options and proposals to ensure that VRS continues to offer functional equivalence to all eligible users and is as immune as possible from any additional waste, fraud, and abuse.”).

therefore should abandon any further efforts to address IP CTS-specific issues in CG Docket Nos. 10-51 or 03-123, and should consider issues related to IP CTS in a separate docket.

I. INTRODUCTION

Hamilton appreciates and applauds the Commission's efforts to ensure the long-term viability of the TRS program and to reduce waste, fraud, and abuse of the interstate TRS Fund. As the Commission is well aware, for many years the VRS program "has been beset by waste fraud and abuse, and by compensation rates that have become inflated well above actual cost."³ In contrast, the Commission has not concluded that other forms of TRS have been plagued by the same fraud and abuse.⁴ The Commission should not assume that the problems that have affected VRS also affect IP CTS, nor should it assume that actions taken with respect to the VRS program are appropriate for IP CTS.

Each form of TRS is different and faces different challenges and requirements. In addition to VRS and IP CTS, the Commission has authorized traditional TRS, IP Relay, and speech-to-speech relay service ("STS"). The variances between these services are significant.⁵

³ *Id.* (footnotes omitted).

⁴ Earlier this year, the Commission took measures "to address certain practices related to the provision and marketing of [IP CTS] that *appear* to be contributing to a recent and dramatic spike in reimbursement requests to the [TRS Fund] of sufficient magnitude to constitute a serious threat to the Fund if not promptly and decisively addressed." *Misuse of Internet Protocol (IP) Captioned Telephone Service Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 13-24, CG Docket No. 03-123, Order and Notice of Proposed Rulemaking, 28 FCC Rcd 703 ¶ 1 (2013) ("*IP CTS NPRM*") (emphasis added). The Commission sought comment on whether the growth of IP CTS was related to fraud or misuse, but has not concluded that the service has been so affected. *Id.* ¶ 38. The Commission's emphasis, rather, has been on efforts to register users, confirm their eligibility for the service, clarify provider marketing practices, and regulate the "captions on" feature.

⁵ The Commission suggests that there are "significant commonalities among VRS, IP Relay, and other forms of iTRS" and notes that VRS and IP CTS now have comparable requirements for certification and eligibility. *VRS Further Notice* ¶ 250. Hamilton disagrees that the commonalities are significant. As discussed herein, any commonalities between the services are outweighed by their differences, thus meriting divergent regulatory requirements.

The services rely on distinct technologies and network capabilities; are compensated through different mechanisms; are intended for and utilized by consumers facing different disabilities; have different costs of providing service; and are provided pursuant to different levels of competition. Accordingly, they do not share the same challenges and should not be regulated in a uniform manner.

Unlike VRS and IP Relay, IP CTS has certain built-in protections from fraud and abuse. For example, IP CTS generally uses a connection via the public switched telephone network (“PSTN”) or voice over IP (“VoIP”), rather than carrying the connection entirely over the Internet. IPCTS users therefore must subscribe to a voice telephone service separate from their use of IP CTS. In addition, because the voice component of an IP CTS call relies on network signaling, subscriber information available from the network is readily identifiable. This is in contrast to IP Relay and VRS, which do not require the user to subscribe to a voice telephone service.

IP CTS is also subject to a different cost recovery mechanism from VRS and IP Relay. Since 2007, IP CTS rates have been determined (and should continue to be determined) by a competitively-based Multistate Average Rate Structure (“MARS”), which calculates the interstate compensation rate for traditional Captioned Telephone Service (“CTS”) and IP CTS by using a weighted average of the rates for *intrastate* CTS. MARS does not rely on the projected cost or data submissions of providers – instead, it relies on rates that are competitively bid at the state level. Due to the competitive nature of the state bidding process, there is a built-in

incentive to lower costs, and thus IP CTS providers have no ability or reason to inflate their cost or data submissions.⁶

In short, the Commission should not consider IP CTS issues in CG Docket No. 10-51 – a docket established to monitor and address VRS issues. Instead, the Commission should consider each form of TRS in separate, dedicated dockets.⁷ In this way, the Commission can isolate issues specific to each service and consider ways to improve each respective program.⁸ Perhaps more importantly, considering separate services in different dockets will aid public comment, as stakeholders will better be able to identify and comment on issues that are clearly relevant to the service.⁹ Likewise, restructuring Part 64 of the Commission’s rules so that the rules are service-specific and transmission-specific, as proposed,¹⁰ will aid both providers and consumers. A

⁶ As the Commission has previously recognized, the MARS Plan “eliminates the need to review and possibly disallow costs reported by providers” as the “best measure of [providers’ actual, reasonable costs,] where available, is the compensation rates by states for the same, *albeit* intrastate, service.” *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140 ¶ 25 (2007) (footnotes omitted).

⁷ The Commission continues to use CG Docket No. 03-123 generally for all TRS services, and it may wish to close that docket ten years on, much as it did CC Docket No. 98-67 in 2005. The Commission now uses CG Docket No. 10-51 for VRS, CG Docket No. 08-15 for STS, CG Docket No. 12-38 for IP Relay, and CG Docket No. 13-24 for IP CTS, and the continued use of these service-specific dockets may be the best course.

⁸ Doing so would not foreclose the Commission from using lessons learned from one service to seek comment on another, or to address specific issues that may be common among services.

⁹ Here, for example, stakeholders must review an unwieldy 111-page document that alternates between seeking comment on issues applicable to VRS only and those that may be applicable to IP CTS, all iTRS, or the TRS program more generally. As one example of the problems generated by such an approach, the *VRS Further Notice* discusses proposals for speed of answer in paragraphs 261 to 265. Paragraphs 261, 262, 263, and 265 appear to focus only on VRS providers. In contrast, paragraph 264 could be read more broadly as a proposal to require all providers to submit call detail information to the TRS Fund administrator – the only reference to VRS is on the “proposed methodology for calculating and verifying speed-of-answer compliance,” which does not necessarily include the paragraph’s data submission proposal. *VRS Further Notice* ¶ 264.

¹⁰ *Id.* ¶ 269.

revised structure of the rules will offer clear guidance to consumers and providers as to which rules apply specifically to each service.¹¹

II. THE COMMISSION SHOULD NOT EXTEND VRS STRUCTURAL REFORMS TO IP CTS

The Commission seeks comment on whether it should extend the structural reforms adopted in the *VRS Order* to other forms of iTRS.¹² The Commission asserts that the reforms “to improve the efficiency and availability of the VRS program could be equally beneficial if applied to other forms of iTRS, and such application would further simplify the administration of the TRS program.”¹³ Other forms of TRS, however, face different challenges that require a more nuanced approach than simply grafting VRS rules onto those other services. In fact, because the structural reforms for VRS were adopted to cure issues specific to VRS, extending such reforms to other services will create additional costs and burdens for providers without solving any actual problems associated with other forms of TRS.

Indeed, the Commission currently is considering reforms specific to IP CTS in a separate proceeding,¹⁴ and an order in that proceeding is currently on circulation. As an initial matter, the Commission should first let the reforms it deems appropriate for IP CTS go into effect before considering further reforms. If, for example, such reforms resolve the Commission’s concerns

¹¹ Currently, providers and consumers must review the rules, a number of report and orders, and certain waiver orders to determine what rules actually are applicable for a given service. This necessity raises regulatory and legal costs to providers, and introduces an unnecessary lack of clarity. Hamilton also imagines that Commission staff share these burdens and challenges.

¹² *VRS Further Notice* ¶ 250.

¹³ *Id.* In addition, Sorenson Communications, Inc. has filed a petition for review of the *VRS Order*, asserting that certain portions of the *VRS Order* exceed the Commission’s jurisdiction and authority, violate the Administrative Procedure Act, are arbitrary, capricious, and an abuse of discretion, and are otherwise contrary to law. *See Sorenson Communications, Inc. v. FCC*, Case Docket No. 13-1215 (D.C. Cir.). While Hamilton takes no position on the merits, if any, of Sorenson’s appeal, the Commission should not create additional uncertainty by extending the rules adopted in the *VRS Order* to other forms of TRS until any judicial challenges to the *VRS Order* have been resolved.

¹⁴ *See generally IP CTS NPRM.*

with respect to the IP CTS program, additional reforms may only add unnecessary costs and burdens for IP CTS providers without any accruing benefit to consumers.

Further, the Commission's concerns with respect to IP CTS were limited to the growth rate of IP CTS,¹⁵ in contrast to the Commission's concerns with the per-minute rate of VRS. Accordingly, several proposed reforms in the *VRS Further Notice* do not appear to be appropriate for IP CTS, the rates of which are based on a competitive, market-based mechanism. Specifically, the following proposals, which were adopted primarily to ensure that VRS providers do not submit inflated costs,¹⁶ would seem to add complexities and costs without any demonstrated need or corresponding benefit: the use of auctions for IP CTS;¹⁷ a neutral platform;¹⁸ and a national outreach program.¹⁹ The inappropriateness of these proposals for IP CTS underscores the fact that the Commission should consider each service in separate items and dockets.

Similarly, given the technical differences between VRS and IP CTS, requiring each IP CTS provider to offer users the capability to register with the provider as a "default provider," to populate the TRS User Registration Database ("TRS-URD"), and to query the database to ensure each user's eligibility for each call²⁰ is wholly unnecessary. As an initial matter, IP CTS users do not need a new, provider-issued ten-digit number in order to use the service. IP CTS users

¹⁵ See Comments of Hamilton Relay, Inc., CG Docket No. 13-24, CG Docket No. 03-123, at 7-8 (filed Feb. 26, 2013).

¹⁶ The analysis of cost recovery is very different under MARS because the rate is not based on underlying costs and cost submissions. Therefore, any reforms intended primarily to prevent providers from inflating cost submissions are not appropriate for IP CTS, unless the Commission identifies a separate, primary benefit.

¹⁷ *VRS Further Notice* ¶ 238.

¹⁸ *Id.* ¶ 253.

¹⁹ *Id.* ¶ 254. There also would be no synergy associated with extending the capability of the neutral video communications service provider to IP CTS, as the services rely on completely different technologies.

²⁰ *Id.* ¶ 251.

already subscribe to a voice telephone service.²¹ Registering the LEC-issued telephone numbers of such users in the TRS-URD would amount to a second, redundant registration of their phone numbers.²² Additionally, IP CTS users are not presently listed in the NeuStar-administered iTRS Numbering Directory, and thus IP CTS providers do not need to undertake the additional step of dipping that database in order to confirm that the user is a legitimate user. That legitimacy is established without databases because the IP CTS user is already a subscriber to a PSTN- or VoIP-based number in the network. The iTRS Numbering Directory is simply irrelevant to IP CTS, and so would be its corollary TRS-URD.

III. PROPOSALS RAISED IN THE *FURTHER NOTICE* THAT WOULD AFFECT IP CTS SHOULD BE CONSIDERED IN THE IP CTS DOCKET, OR NOT AT ALL

Certain of the Commission's proposals in the *Further Notice* may have merit for IP CTS. However, even these proposals raise unique issues for IP CTS as opposed to VRS. Therefore, to the extent the Commission wishes to pursue these proposals for IP CTS, it should do so in the IP CTS docket in a manner that is specific to the unique nature of IP CTS.

For example, Hamilton does not oppose rules to protect against slamming for IP CTS.²³ However, slamming is a fundamentally different issue for IP CTS because users typically have a telephone number issued by a local exchange carrier ("LEC") or VoIP provider. As a result, the consumer is already protected by the slamming rules applicable to the LEC and VoIP provider, and thus there may not be a need for redundant IP CTS-specific slamming protections,

²¹ Hamilton provides its web- and mobile-based IP CTS users with the option of acquiring a Hamilton-issued "CallMe Number" which is specific to the user. However, such numbers are not required to be issued under FCC rules, and are not part of the iTRS Numbering Directory administered by NeuStar. Hamilton supports the continued exclusion of such numbers from both the iTRS Numbering Directory and the TRS-URD for the reasons discussed herein.

²² In addition, the Commission is already addressing IP CTS registration and certification in a separate proceeding. *See VRS Order* ¶ 83 n. 199.

²³ *VRS Further Notice* ¶ 255. Hamilton also believes that the proposed customer proprietary network information protections ("CPNI") are a reasonable and justified method for protecting consumers. *Id.* ¶ 270.

particularly where IP CTS providers are not subject to the iTRS numbering requirements. Nor has there been any evidence of slamming in the IP CTS context that would warrant such redundant requirements.

Hamilton also does not oppose the Commission's proposal to establish compliance plans.²⁴ However, Hamilton notes that IP CTS providers already are subject to annual certifications and to audits. Before implementing such a requirement, the Commission should consider what additional value such compliance plans will offer and what the associated burdens of preparing, submitting, and regulating such plans will be. The Commission should also consider whether increased enforcement of the Commission's existing rules would obviate the need for such plans.

The Commission also seeks comment on whether it should extend the general prohibition on discrimination to IP CTS²⁵ and whether it should adopt a general rule prohibiting TRS providers from engaging in unjust and unreasonable practices.²⁶ To the extent the Commission wishes to adopt such rules, it should provide clear guidance as to what constitutes unjust or unreasonable discrimination and unjust and unreasonable practices – and it should do so in a manner specific to each service. Otherwise, the lack of clarity could create unintended consequences that ultimately remove any benefits derived from adopting such rules.²⁷

IV. CONCLUSION

For the reasons described above, the Commission should not address IP CTS issues in this proceeding. Instead, should the Commission wish to consider changes to the IP CTS

²⁴ *Id.* ¶ 255.

²⁵ *Id.* ¶ 255.

²⁶ *Id.* ¶ 271.

²⁷ Much of the Commission's precedent with respect to unjust and unreasonable practices deals with unjust and unreasonable rates, an issue that is largely irrelevant to rate-regulated TRS.

program, it should do so in CG Docket No. 13-24 and only adopt changes that are relevant specifically to IP CTS.

Respectfully submitted,

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